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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 507

PHILIP LANDES,
Appellant,

v.

SYLVIA LANDES,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEAL

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MOTION TO DISMISS APPEAL

Preliminary Statement

ve-named appellant—defendant in the proceed-
-has appealed from a judgment of the Court of
the State of New York, dated and entered
56, which unanimously affirmed an order of the
Division of the New York State Supreme Court,
cial Department, entered January 31, 1956,
y affirming, without opinion, an order of the
elations Court of the City of New York, Family
sion, Bronx County (LORENCE, J.), dated Feb-
955, and entered March 7, 1955, which directed
ant to pay the sum of $20 weekly, retroactive
er 23, 1954, for the support of his ten-year-old

The order of the Domestic Relations Court is embodied in a decision reported at 207 Misc. 460, 138 N. Y. Supp. 2d 442. The affirmance without opinion by the Appellate Division is reported at 1 A. D. 2d 772, 149 N. Y. Supp. 2d 216. The opinion of the Court of Appeals is reported at 1 N. Y. 2d 358, 135 N. E. 2d 562, and is set forth in Appendix A hereto (*post,* pp. 1a-8a).

By this appeal the defendant in the support proceeding seeks to challenge the constitutional validity of the Uniform Support of Dependents Law, enacted in the State of New York by Laws 1949, ch. 807, and of the Uniform Reciprocal Enforcement of Support Act, enacted in the State of California by Stats. 1951, ch. 694, as amended by Stats. 1953, ch. 1290; these being the statutes pursuant to which the support proceeding was brought and the support order made and entered.

The appellee moves to dismiss the appeal on the ground that it does not present a substantial Federal question.

Statutes Involved

The appellant sets forth in his brief (Appendix B, pp. 9a-19a) what would appear to be a substantially accurate version of the text of the New York statute as it read in March, 1952, when the petition for support was forwarded from the California Superior Court to the Domestic Relations Court of the City of New York.*

We set forth (*post,* Appendix B, pp. 9a-21a) the provisions of the statute as they read on March 7, 1955, when the support order of the Domestic Relations Court was entered, and have indicated such amendments to the statute as were made thereafter and prior to the making and

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* We note, however, among other inconsistencies, that while the appellant includes in the statute § 5-a, added by Laws 1952, ch. 40, he omits § 7-a, added by Laws 1950, ch. 702.

ıtry of the judgment of the New York Court of Appeals
Laws 1955, ch. 289, effective October 1, 1955, and by
aws 1956, ch. 150, effective March 22, 1956. We note in
is connection that amendatory statutes dealing with ex-
ting obligations of support are regarded by the courts
f the State of New York as remedial or procedural in
ature and hence applicable to pending actions or pro-
eedings. *Mazer* v. *Mazer*, 276 App. Div. 733, 738 (1950),
ff'd in this respect 301 N. Y. 774 (1950).

The New York statute and the several amendments
hereto may be found in convenient form in McKinney's
Consolidated Laws of New York, Book 65, Part I, tit.
'Unconsolidated Laws," under Title 7, entitled "Do-
nestic Relations," §§ 2111-2120, and the Cumulative An-
nual Pocket Part thereto.

We also set forth (Appendix C, *post*, pp. 22a-29a) the
California statute, with respect to the text of which we
are in agreement with appellant.

The Petition for Support

The support proceeding was instituted by a petition or
complaint (R. 4-7) made by Sylvia Landes, the defendant's
wife (as she then was), verified March 26, 1952, and filed
on the same day in the Superior Court of the State of
California, County of Los Angeles, which set forth that
Sylvia Landes, therein denominated the plaintiff, and a
child, then seven years of age, issue of the marriage be-
tween the plaintiff and the defendant, had been residents
of the State of California for more than a year and of
the County of Los Angeles for more than three months;
that the plaintiff had brought suit for divorce by separate
and concurrent action in the same Court; that the defend-
ant was a resident of Bronx County, State of New York;
that the plaintiff and her child had left the defendant's
abode as a result of cruel and inhuman treatment and had

come to California to reside there permanently with her parents; that the defendant was a certified public accountant and an agent of the Bureau of Internal Revenue, earning over $5,000 a year; that the defendant had not contributed to the support of the child since February 15, 1951; that the plaintiff was employed but financially unable to provide for the support of the child; that the State of New York and the State of California had enacted statutes for the reciprocal enforcement of obligations of support; that under the New York statute a husband in one State was liable for the support of a child under 17 years of age residing in another State having a similar statute; and that judgment should be entered directing payment by the defendant of $125 a month for the support of the infant child.

Certificate of the California Court

Pursuant to the provisions of the California statute, the Superior Court of the State of California, County of Los Angeles, made an order under date of April 7, 1952, entered in said Court on April 15, 1952, reciting (R. 13-14) that the petition had come on for a hearing in said Court; that the plaintiff had given sworn testimony in corroboration of the allegations of her complaint; and that the following findings had been made by the Court, to wit: That the plaintiff and defendant were husband and wife; that the defendant was the father of a minor child then eight years of age; that the complaint set forth facts indicating that the defendant owed a duty of support to the said child and the plaintiff; that neither the plaintiff nor the child had received any funds from the defendant for the support of the child or of the plaintiff; that the plaintiff and the child were financially unable to support themselves; that the sum of $125 a month was a reasonable amount for the support of the child and the plaintiff; and

at the State of New York had jurisdiction in the premises virtue of the defendant's residence in Bronx County, ate of New York.

The order of the Superior Court thereupon directed the erk of that Court to prepare certified copies of the com-aint, the foregoing certificate of the Court, and of the eciprocal Enforcement of Support Act of the State of alifornia, and to transmit said papers to the Clerk of the omestic Relations Court of the City of New York, Family ourt Division, County of the Bronx, City of New York. he papers were duly forwarded and the proceeding was ocketed in the Domestic Relations Court as U. S. D. L. Uniform Support of Dependents Law] No. 667/192.

Proceedings in the Domestic Relations Court

The support proceeding came on for a hearing in the omestic Relations Court of the City of New York on May 8, 1952, and resulted in an order, made as of that date, roviding for payment of $65 a month for the support of he child. The defendant appealed from that order to the Appellate Division, which, on March 2, 1954 (1) reversed he support order because of "the informality of the record, he absence of any findings, formal or informal, and the mbiguity in the record as to whether respondent-appellant *i. e.*, the defendant] consented to the order," and (2) re-nitted the matter to the Domestic Relations Court for pro-eedings *de novo* (see opinion *sub nom. Anonymous* v. *Anonymous*, 283 App. Div. 770).*

* Attempts of the defendant to assert his constitutional objections o the support statutes by appeal from the order granting a new trial nd by a separate proceeding in the Supreme Court of the State of New York to obtain an order of prohibition restraining the Domestic Relations Court from hearing the support proceeding are set forth n a footnote to the opinion of the New York Court of Appeals (see Appendix A, *post*, p. 2a). We do not regard these proceedings s germane to the instant appeal.

Pursuant to the mandate of the Appellate Division, the support proceedings came on anew for hearing in the Domestic Relations Court before Mr. Justice LORENCE of that Court on June 9, 1954. The hearing on that day was taken up for the most part with various objections by defendant and his counsel to the jurisdiction of the Court. The defendant's objections were overruled but it then developed that the defendant was desirous of filing a verified answer to the support petition, controverting various allegations thereof and setting forth purported defenses thereto. This procedure is permitted by § 6, subd. f, of the New York statute. The Court permitted the filing of the answer and, in accordance with the statute, stayed further proceedings pending the transmittal to the California authorities of "a transcript of the clerk's minutes showing the denials entered by the respondent" and the receipt from California of such proof as the Court in that State might deem proper, together with its recommendation "based on all of such proof and evidence" (see § 6, subds. f, g, and h, set forth hereinafter in Appendix B, pp. 17a-18a).

The record contains a transcript of the testimony taken in the Superior Court of the State of California, County of Los Angeles, on July 19, 1954, following the transmittal to that Court of the defendant's answer (R. 76-83). It also contains the interrogatories subsequently forwarded to the California Superior Court on demand of the defendant in accordance with the right accorded him by the statute (§ 6, subd. i), and the answers thereto as given by the petitioner at a hearing before the California court on November 10, 1954 (R. 109-127).

It appears from the testimony of Sylvia Landes (or Sylvia Smith, as she then was) on her appearances before the California Court, that she was married to the defendant in January, 1943 (R. 77, as corrected at R. 110); that a child, Dorothy Landes, was born of the marriage on July

20, 1944 (R. 78, as corrected at R. 111, 116, 121); that she left the defendant in February, 1951, taking the child with her, and established a new home in California, where her parents, her brother and sister reside (R. 77, 82); that she commenced an action for divorce in the State of California on March 26, 1952 (the same day on which she filed the petition for support); that a final decree was entered in the divorce suit in July, 1953 (R. 77, as corrected at R. 114; see also R. 112-113); and that the divorce decree awards her custody of the child (R. 78), but makes no provision for support (R. 113-114).

The petitioner further testified at the California hearings that at the time of her marriage to the defendant he was employed in the Treasury Department as an Internal Revenue Agent at a salary of $5,000 a year (R. 78). From the time she left him in February, 1951, until May, 1952, when the first support order was made by the Domestic Relations Court, she received no moneys from the defendant for the support of the child except for a single money order in the sum of $25 (R. 116, 124). Nor did she receive any moneys from him following the reversal by the Appellate Division of the first support order in March, 1954, until the entry in March, 1955, of the second support order (R. 79).

The petitioner set forth in detail the necessary expenditures for the support of her child, amounting to about $125 a month (see R. 80-81; and see affidavit of petitioner, R. 64-67). She stated in open court her inability to pay for the transcript of the minutes of the hearing (R. 82). She testified that if her family had not loaned her moneys in substantial amount after she left the defendant, her child would have become a public charge (R. 118, 125). Her present husband, Ira M. Smith (whom she married in April, 1954 [R. 79]), earns about $110 a week and finds it difficult to contribute adequately to the support of his wife's child (R. 119, 121; and see affidavit, R. 84).

Following the receipt from the California court of transcripts of the proceedings in that tribunal, the Domestic Relations Court resumed its hearing of the support proceeding on December 22, 1954. Counsel for the defendant sought to have the case adjourned on the basis of the then pending prohibition proceedings in the New York Supreme Court (see footnote, *supra,* p. 5). When this request was refused, counsel sought to submit what he termed re-cross-interrogatories for transmittal to California. These were rejected by the Court "as already having been covered by prior testimony and prior interrogatories" (R. 131).

The defendant was called to the stand by the Assistant Corporation Counsel representing the petitioner but refused at first to testify "on the ground that by his testimony he may incriminate himself" (R. 134). The objection was overruled but the defendant took the stand only after the Court had threatened to hold him in contempt (R. 135-136). It was elicited from the defendant that he was still employed as an Internal Revenue Agent receiving a salary of $6,340 per year, with take-home pay of about $90 a week (R. 142)); that he has a checking account with a balance of about $1,200 (R. 144); that he has a savings bank account with a balance of about $2,000 (R. 144); and that his "total assets" come to about $10,000 (R. 145-146).

The motions of counsel for defendant to dismiss the proceeding on various grounds were denied (R. 154-157) and decision was reserved by the Court (R. 162), which subsequently handed down the determination which has given rise to the instant appeal to this Court.

ARGUMENT

The appellant's attack on the uniform support statutes presents no substantial Federal question since

(a) The enactment by the several States of substantially similar reciprocal statutes for the purpose of enforcing duties of support does not violate the Compact Clause of the Constitution; and

(b) The uniform support statutes do not infringe the appellant's rights under the Constitution to the equal protection of the laws or his privileges and immunities as a citizen of the State of New York and of the United States.

(1)

The appellant seeks to have this Court invalidate on constitutional grounds an order directing him to contribute the sum of $20 a week towards the support and maintenance of his infant daughter, now twelve years of age. The statutes on which the support order rests and which the appellant challenges are the Uniform Support of Dependents Law (N. Y. Laws 1949, ch. 807, as amended) and the Uniform Reciprocal Enforcement of Support Act (California Code of Civil Procedure, pt. 3, tit. 10-a, §§ 1650-1690, as amended). The statutes are set out in full in Appendix B (*post*, pp. 9a-21a) and Appendix C (*post*, pp. 22a-29a), respectively.*

We note at the outset of our argument that the Uniform Support of Dependents Law or a substantially similar statute, the Uniform Reciprocal Enforcement of Support Act, is in force in every one of the 48 States of the Union and also in Alaska, Guam, Hawaii, Puerto Rico and the Virgin Islands. See table and historical note in Uniform

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* See, with respect to the text of the New York statute, comment *supra*, pp. 2-3.

Laws Annotated, Vol. 9A, 1955 Cumulative Pocket Part, pp. 68-69; also references in the opinion below (Appendix A, *post*, pp. 3a-4a).

It is set forth in a prefatory note to the Uniform Reciprocal Enforcement of Support Act (Uniform Laws Annotated, Vol. 9A, 1955 Cumulative Pocket Part) that (see Pocket Part, at p. 72) the act was approved by the National Conference of Commissioners on Uniform State Laws* and by the American Bar Association in their annual conferences at Washington, D. C., in September, 1950. The same note indicates the nature of the problems which dictated the formulation and approval of the uniform support acts in the following passages (at p. 73):

> "With the increasing mobility of the American population the problem of interstate enforcement of duties of support became acute. A deserting husband was beyond the reach of process in the state where he had abandoned his family and the family had no means to follow him. Welfare departments saddled with the burden of supporting destitute families were often prevented from enforcing the duty of support in the state where the husband could be found by decisions holding that the duty existed only as to obligees within the state."
>
> * * * * *
>
> "In June 1949 the Social Security Administration announced that the total bill for aid to dependents

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* The National Conference of Commissioners on Uniform State Laws is a body of Commissioners deriving their authority from appointment by the Governors of their respective States. The Commissioners meet annually in a Conference at which the Acts drafted by Committees are considered and discussed by the entire body. No draft is considered by the Conference until it has been studied in detail by the Committee having it in charge. Acts are not approved by the Conference until they have been considered, section by section, by at least two annual conferences. See page V of Vol. 9A of Uniform Laws Annotated.

where the father was absent and not supporting was approximately $205,000,000 a year for the nation and the states."

And the following language of the Commissioners' note is pertinent to cases such as the one at hand where the obligee (the child) has established domicile in a State other than the one where the obligor (the father) is found and jurisdiction acquired (pp. 73-74):

"The 1950 act attempted to improve and extend by reciprocal legislation the enforcement of duties of support through both the criminal and the civil law. Its provisions are in addition to remedies now existing for the enforcement of duties of support within the state. Each state will enforce its own laws as before so long as the husband remains in the state, and the new act is meant to improve enforcement where the parties are in different states.

The only extension of the duties of support is the principle stated in Section 4 that the duty shall bind the obligor regardless of the presence or residence of the obligee. The purpose here is to overcome the rule in some states that the duty of support runs only in favor of obligees within the state, and to overcome the indifference of many states which would refuse or neglect to enforce support in favor of out-of-state dependents on the theory often only tacitly admitted, that one state has no interest in helping another state rid itself of the burden of supporting destitute families."

The two-state procedure provided for by the Act* is

* In 1948, the New York Joint Legislative Committee on Interstate Cooperation drafted a Uniform Support of Dependents Law, which was enacted in New York and other States. The idea of a two-state procedure originated with the New York Act and was adopted by the Commissioners on Uniform State Laws. See *Mahan* v. *Read*, 240 N. C. 641, 644-645; 83 S. E. 2d 706, 709 (1954).

summarized in the Commissioners' note in these words (pp. 74-75):

> "Sections 9 to 24 cover details of what is known as the two-state proceeding. In the past, the greatest difficulty in enforcing support where the parties are in different states has been the expense of travel to a distant state to litigate the rights of the destitute obligee. Under this Act this expense can be reduced to filing fees plus a few postage stamps. In a nutshell, this two-state proceeding is as follows: It opens with an action (Section 9) which normally will be commenced in the state where the family has been deserted (the initiating state). A very simplified petition is filed (Section 10). The judge looks it over to decide whether the facts show the existence of a duty of support and if they do he sends the petition and a copy of this Act to a court of the responding state to which the husband has fled or in which he has property (Section 13). That court will take the steps necessary to obtain jurisdiction of the husband or his property, will hold a hearing (Section 17) and if the court finds that a duty of support exists, it may order the defendant to furnish support (Section 20) and will transmit a copy of its order to the court in the initiating state (Section 21). To enforce compliance with its orders the court may subject the defendant to such terms and conditions as it may deem proper, may require him to furnish bond or make periodic payments or, in case of refusal, may punish him for contempt (Section 22). It has the duty to transmit to the initiating court any payments it receives and upon request to furnish a certified statement of those payments (Section 23). The initiating court must receive and disburse these payments (Section 24).
>
> This simple two-state procedure can be carried out with a minimum of expense to the family or the state —the usual court costs and postage for the trans-

mission of papers and money. Yet it preserves due process, for each party pleads in his own court. Provisions covering other details or procedure have been kept out of the Act so that the usual rules for obtaining jurisdiction for carrying on the procedure and for appeals may be held to govern."

The New York Court of Appeals in its opinion below (*Landes* v. *Landes*, 1 N. Y. 2d 358; also Appendix A, *post*, pp. 1a-8a) says of the New York statute (p. 363):

> "The New York Act specifically declares that a husband is responsible for the support of his child or children under 17 years of age residing or found in the same or another State having substantially similar reciprocal laws and he may be required to pay for their support according to his ability and this is so even if the marriage of the parents has been legally dissolved (§ 3, subds. [a], [g]. The Act also prescribes the procedure for enforcement of the reciprocal order (§ 4). Furthermore, the Act, by its specific terms, is limited to its avowed purpose, that is, to compel support of dependent wives, children and poor relatives within and without the State and to provide a procedure for enforcement thereof against persons residing in other States and territories of the United States having substantially similar reciprocal laws (Preamble to New York Act). It is also provided that the Act shall be construed as an additional remedy in no way affecting or impairing other existing remedies—whether civil or criminal—now available to the petitioner in relation to the same subject matter (§ 8) and so as 'to effectuate its general purpose to make uniform the law of the states which enact it' (§ 9)."

The efficacy of the uniform support laws in dealing with the problem of support where obligor and obligee reside in different States may be gauged from the circumstance

that in the New York City Domestic Relations Court alone there were in the calendar year 1955 total collections under the statute of approximately $1,200,000, split almost equally between cases initiated in New York City and cases forwarded to New York City from an initiating State, and for the first four months of 1956 the total collection under the statute amounted in this one Court to $492,235. See page 3 of Newsletter on Reciprocal Support Laws, released by the Council of State Governments,* dated June 13, 1956.

(2)

In view of the salutary accomplishments of the uniform support statutes and their enactment into law by every one of the States and territories of the United States (see *supra,* pp. 9-10), it would be unfortunate indeed were they now held to be unconstitutional. We believe, however, that there is little reason for concern on this score. The constitutionality of the uniform support statutes has been sustained or implicitly assumed in many cases decided by the highest appellate courts of the several States where the question has been litigated. See, in addition to the comprehensive and, we believe, well reasoned opinion below of the New York Court of Appeals, the following cases: *Duncan* v. *Smith,* 262 S. W. 2d 373 (Ky., 1953);** *Dean v. Dodge,* 220 Ark. 853, 250 S. W. 2d 731 (1952); *Commonwealth of Pennsylvania ex rel. Dept. of Public Assistance* v. *Mong,* 160 Ohio St. 455, 117 N. E. 2d 32 (1954); *Mahan* v. *Read,* 240 N. C. 641, 83 S. E. 2d 706 (1954); *Commonwealth of Pennsylvania for use of Warren* v. *Warren,* 204 Md. 467, 105 Atl. 2d 488 (1954); *Freeman* v. *Freeman,* 226

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* The Council has its main office at 1313 East 60th Street, Chicago 37, Ill. Its eastern regional office is at 522 Fifth Avenue, New York 36, N. Y.

** This is probably the leading case on the subject. Aside from the Attorney General of Kentucky, no less than 13 Attorneys General submitted as *amici curiae* in support of the statute.

La. 410, 76 So. 2d 414 (1954); *Commonwealth of Pennsylvania* v. *Shaffer,* 175 Pa. Superior Ct. 100, 103 Atl. 2d 430 (1954), allocatur refused by Pennsylvania Supreme Court (see 175 Pa. Superior Ct. XXV); *Proctor* v. *Sachner,* 143 Conn. 9, 118 Atl. 2d 621 (1955). *Daly* v. *Daly,* 21 N. J. 599, 123 Atl. 2d 3 (1956); *Smith* v. *Smith,* 125 Cal. App. 2d 154, 270 Pac. 2d 613 (1954), hearing denied by California Supreme Court (see 125 Cal. App. 2d 170); *Smith* v. *Smith,* 131 Cal. App. 2d 764, 281 Pac. 2d 274 (1955), hearing denied by California Supreme Court (see 131 Cal. App. 2d 771).

Furthermore, in *Whittlesey* v. *Bellah,* 130 Cal. App. 2d 182, 278 Pac. 2d 511 (1955), hearing denied by California Supreme Court (see 130 Cal. App. 2d 185), cert. den. 350 U. S. 821 (1955), we have a case involving the New York and California statutes here at issue. There, the parties were divorced in Nevada and a support agreement was incorporated in the divorce decree providing that the husband pay a maximum of $50 a month toward the support of a child. Several years later the wife, who had remarried, instituted proceedings in the State of New York under the Uniform Support of Dependents Law seeking an increase in payments. The New York court recommended an increase, whereupon the proceeding was forwarded to the California courts where the father, a resident, was served. The father contended that he was denied due process and equal protection of the laws because he had complied with the terms of the divorce decree, had not absconded or fled, had not received notice of the New York proceeding, and was denied the opportunity to confront his wife and her witnesses. The California courts rejected these contentions and sustained their jurisdiction of the proceeding. This Court denied certiorari.

With this overwhelming authority in support of the statutes in mind, we proceed to discuss the several contentions here made by the appellant.

(3)

The appellant contends (Jurisdictional Statement, pp. 10-17) that the statutes are in conflict with Article I, Section 10, Clause 3, of the Federal Constitution, which provides that "no State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State, * * *." The answer to the contention is found in *Duncan* v. *Smith, supra,* where the Kentucky Court of Appeals said of a like attack upon the Kentucky enactment (262 S. W. 2d, at pp. 377-378):

> "The fourth alleged ground of invalidity is that the Act constitutes a compact between states which requires the consent of Congress under Clause 3, Section 10, Article I, of the Constitution of the United States. The simple answer to this is that the Act does not bear any of the aspects of an agreement or contract between Kentucky and any other state. Kentucky is free to repeal the Act at any time. Furthermore, the Act does not constitute 'the formation of any combination tending to the increase of political power in the states,' which was laid down as the measure of a 'compact' in *State of Virgina* v. *State of Tennessee,* 148 U. S. 503, 13 S. Ct. 728, 734, 37 L. Ed. 537."

The New York Court of Appeals in the instant case also found no merit in this contention. It said (*Landes* v. *Landes,* 1 N. Y. 2d 358, 365; also Appendix A, *post,* p. 5a):

> "It seems clear beyond peradventure that the reciprocity mentioned in the California and New York Acts is not the result of an agreement or compact requiring the consent of Congress. The agreements and compacts that are forbidden by the United States Constitution (art. I, § 10, subd. 3) are indubitably those having an impact on 'the just supremacy of the United States' (*Virginia* v. *Tennessee,* 148 U. S. 503,

519; *Monongahela Nav. Co.* v. *United States,* 148 U. S. 312) or its political integrity (*Florida* v. *Georgia,* 17 How. [U. S.] 491) or interference with sovereign treaty-making powers (*Barron* v. *Baltimore,* 7 Pet. [U. S.] 243, 249) and other situations not pertinent here (cf. U. S. C. A. notes on the Constitution)."

Appellant suggests (Jurisdictional Statement, pp. 14-15) that the several States of the Union by enactment of uniform support statutes "have intruded themselves into the area of interstate commerce in such a way as to encroach upon or interfere with the sovereignty of the United States under the commerce clause." The short answer is that neither Congress nor the Courts have ever indicated that problems of support of a wife or children have anything to do with interstate commerce or are the proper subject matter for federal legislation. So, in *In re Burrus,* 136 U. S. 586 (1889), this Court said (pp. 593-594):

> "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States. As to the right to the control and possession of this child, as it is contested by its father and its grandfather, it is one in regard to which neither the Congress of the United States nor any authority of the United States has any special jurisdiction. Whether the one or the other is entitled to the possession does not depend upon any act of Congress, or any treaty of the United States or its Constitution."

And see *Popovici* v. *Alger,* 280 U. S. 379, 383-384 (1930); *Williams* v. *North Carolina,* 325 U. S. 226, 233 (1945).

(4)

The appellant argues that he has been denied the equal protection of the laws (U. S. Const., Amendment XIV,

Section 1) and that his privileges and immunities as a citizen of the State of New York have been abridged (U. S. Const., Art. IV, Sec. 2, Cl. 1) because, so he asserts (Jurisdictional Statement, p. 18), "California has succeeded in imposing support liability" upon him, a nonresident, without according him the benefits of California statutes under which he would not be obligated to support his child.

The answer to this contention is that the appellant is in fact a resident of the State of New York and that the support order which he contests was made and entered pursuant to the laws of that State. With respect to the impact of the New York statute on a divorced father we need go no further than to quote from the opinion of the New York Court of Appeals handed down below (*Landes* v. *Landes,* 1 N. Y. 2d 358; also Appendix A, *post,* pp. 1a-8a) where it was said (p. 365):

> "Both at common law and by statute, New York has always treated a husband as absolutely responsible in keeping with his ability for the support of his dependent minor child or children (N. Y. City Dom. Rel. Ct. Act, § 101; Social Welfare Law, § 101) and there is no doubt whatever that neither a divorce or remarriage, nor the fact that the mother has legal custody of the child or children, terminates that liability (*Laumeier* v. *Laumeier,* 237 N. Y. 357, 364) and this may be enforced regardless of residence (*Adams* v. *Adams,* 272 App. Div. 29, 30)."

But even were the instant case determinable by the laws of the State of California, it would not avail the plaintiff. The cases he cites (Jurisdictional Statement, pp. 17-18),in so far as they tend to support his interpretation of the California law, have been limited in their application by later holdings which leave no doubt as to the liability of a father for the support of minor children

in the custody of a divorced wife. In *Dimon* v. *Dimon,* 40 Cal. 2d 516, 254 Pac. 2d 528 (1953), the Supreme Court of California, sitting *en banc,* stated the applicable law in these words (40 Cal. 2d, at pp. 523-524):

> "There is a further question which involves the distinction between the plaintiff's alleged claim for support for herself, and support for her minor children. It is the law of this state that a divorced wife who has the custody of minor children may bring an action against the father for their support (*Dixon* v. *Dixon,* 216 Cal. 440 [14 P. 2d 497]; *Davies* v. *Fisher,* 34 Cal. App. 137 [166 P. 833]). Penal Code, section 270, provides for criminal liability of a father who fails to provide for his minor child; and he is not relieved from that liability 'merely because the mother of such child is legally entitled to the custody of such child . . ..' Since it applies to a 'father of either a legitimate or illegitimate minor child', the existence of the marital status is not a prerequisite to liability. Civil Code, section 138, as it existed at the time this action was brought, provided that 'In actions for divorce the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any of the children of the marriage, make such order for the custody, care, education, maintenance and support of such minor children as may seem necessary or proper . . ..' Unlike the construction given to those sections of the Civil Code setting forth the rights of the wife to alimony and support (Civ. Code, §§ 136, 137 and 139) this section has long been held to authorize an action for the support and maintenance of the minor children of a marriage although the marriage has been terminated by a divorce decree. (*McKay* v. *McKay,* 125 Cal. 65 [57 P. 677].) Civil Code, section 137.1, enacted in 1951 after the complaint herein was filed, provides: 'When a father or mother has the duty

> to provide for the support, maintenance and education of the children of the father and mother and wilfully fails to provide for such support . . ., the father or mother, as the case may be . . . may maintain an action in the superior court against the mother or father . . . as the case may be, for the support, maintenance and education of said children.' The effect of this provision does not appear to have been judicially declared. However, it is a legislative enactment of the case law as it existed at the time this action was commenced."

It may be observed, furthermore, that even were it the fact that the uniform support statutes subjected non-residents to treatment different from that accorded residents, the reciprocal nature of the statutes would save them from attack on constitutional grounds. In *Bode* v. *Barrett*, 344 U. S. 583 (1953), this Court disposed of a similar contention in these words (p. 586):

> "We need notice only one other argument and that is that the statute requires Illinois residents to pay the tax, whereas nonresidents are exempted provided the states of their residence reciprocate and grant like exemptions to Illinois residents. That objection, so far as the Fourteenth Amendment is concerned, was adequately answered in *Storaasli* v. *Minnesota*, 283 U. S. 57, 62. And contrary to appellants' suggestions, that kind of reciprocal arrangement between states has never been thought to violate the Compact Clause of Art. I, § 10 of the Constitution. See *St. Louis & S.F.R. Co.* v. *James*, 161 U. S. 545, 562; *Kane* v. *New Jersey*, 242 U. S. 160, 168."

The appellant further asserts (Jurisdictional Statement, pp. 19-20) that "the procedure whereby appellee can institute a support action against appellant in the New York courts without subjecting herself to the jurisdiction of

the New York courts" deprives the appellant of custodial rights he might otherwise have been given under New York law.

This contention rests on an erroneous premise. It is not accurate to state that the New York courts lack the *power* to impose conditions with respect to custody on the grant of support orders under the Uniform Support of Dependents Law. In *Matter of Guyette* v. *Haley*, 286 App. Div. 451 (1955), the Court said (p. 461):

> "If a wife abandoned a husband without cause and took children with her against the husband's wishes to live elsewhere in New York we would ordinarily think the welfare of young children would be promoted by leaving them with their mother and would require the father to support them to the extent of his ability. We could, within the State, provide for visitation and divided custody; but in making an order for support under section 6 of the act the New York Children's Court would have the power to attach to its order for support such conditions as to visitation or temporary custody as may be reasonable; and in effect the problem is in those circumstances not a matter of State lines and inharmonious jurisdictions, but of distance and convenience. In this the judicial agencies of the two States are certain to work harmoniously; they have the same object in view."

Whether the power should be exercised depends, of course, on the facts and circumstances of the particular case. In the instant case the Domestic Relations Court properly refused to acquiesce in the defendant's stand that he should not be held to support of his child unless its custody were surrendered to him by its mother; if for no other reason than that a court of competent jurisdiction has made a determination tha' the mother is entitled to the custody of the child and the child is still

subject to the jurisdiction of that court. See concurring opinion of FRANKFURTER, J., in *Halvey* v. *Halvey*, 330 U. S. 610, 617 (1947).

CONCLUSION

The appeal to this Court from the judgment of the Court of Appeals of the State of New York should be dismissed.

November 7, 1956.

Respectfully submitted,

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Attorney for Appellee.

SEYMOUR B. QUEL,
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of Counsel.

APPENDIX A

Opinion of New York Court of Appeals as reported at 1 N. Y. 2d 358

COURT OF APPEALS

STATE OF NEW YORK

SYLVIA LANDES (SYLVIA SMITH),

Respondent,

v.

PHILIP LANDES,

Appellant.

DYE, J. In this appeal we deal with the reciprocal enforcement of support of a minor under the Uniform Support of Dependents Law (L. 1949, ch. 807, as amd., hereinafter called New York Act) and the Uniform Reciprocal Enforcement of Support Act of California (California Code of Civil Procedure, pt. 3, tit. 10-a, §§ 1650-1690, hereinafter called California Act), which are here challenged as constitutionally invalid enactments.

The appeal is here as of right (Civ. Prac. Act, § 588, subd. 1, par. [a]) from an order of the Appellate Division of the Supreme Court in the first judicial department, unanimously affirming, without opinion, an order of the Domestic Relations Court, Family Court Division, City of New York, Bronx County, directing the appellant to pay the sum of $20 weekly for the maintenance and support of his dependent minor daughter, aged 12½ years.

By way of factual background, it appears that the parties were married in New York City in 1942. Following the birth of the child in 1944 irreconcilable differences developed. The wife thereafter procured in the courts of California an absolute decree of divorce on the grounds of cruelty and was awarded the custody of the child without, however, obtaining any provision for the support of either

herself or the child. The validity of the California divorce decree is not challenged. Thereafter on April 9, 1954 the mother remarried and is now living with her present husband in California.

This proceeding was initiated by the mother of the minor child pursuant to the California Act. It resulted in a certificate finding that $125 per month was a reasonable amount for support and in an order directing the Clerk of the Superior Court of California, as initiating State, to forward the certified transcript of the proceeding had in that court to the Domestic Relations Court of the City of New York as respondent State for determination and enforcement, pursuant to the reciprocal provisions of the Uniform Statute (California Act, § 1676; New York Act, § 6). The defendant husband appeared specially to test jurisdiction, filed an answer challenging procedural aspects of the proceeding as well as the constitutional validity of the statutes under which it was brought (New York Act, § 6)[1] and at a hearing *de novo* took the stand in his

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[1] On March 2, 1954 a Domestic Relations Court order providing for payment of $65 per month was reversed on appeal by the Appellate Division, First Department, on technical grounds and the matter was remitted to the Domestic Relations Court for proceedings *de novo* (*Anonymous* v. *Anonymous*, 283 App. Div. 770).

On May 27, 1954 we denied leave to appeal to this court and, on our own motion, dismissed, for nonfinality, an appeal taken on constitutional grounds (*Anonymous* v. *Anonymous*, 307 N. Y. 671).

On July 8, 1954, Mr. Justice REED of the Supreme Court of the United States denied application for stay pending filing of petition for certiorari.

While the above was taking place, appellant instituted a prohibition proceeding in the Supreme Court. This was dismissed on May 21, 1954 (*Landes* v. *Domestic Relations Ct.*, N. Y. L. J., May 24, 1954, p. 9, col. 3).

The prohibition proceeding was renewed and again dismissed by order made November 26, 1954.

A direct appeal to our court on constitutional grounds from that order was dismissed on January 13, 1955 (*Matter of Landes* v. *Domestic Relations Ct.*, 308 N. Y. 756).

An appeal to the Supreme Court of the United States was dismissed (*Landes* v. *Domestic Relations Ct.*, 350 U. S. 805).

own behalf to controvert the merits of the petitioner's allegations.

The New York Act specifically declares that a husband is responsible for the support of his child or children under 17 years of age residing or found in the same or another State having substantially similar reciprocal laws and he may be required to pay for their support according to his ability and this is so even if the marriage of the parents has been legally dissolved (§ 3, subds. [a], [g]). The Act also prescribes the procedure for enforcement of the reciprocal order (§ 4). Furthermore, the Act, by its specific terms, is limited to its avowed purpose, that is, to compel support of dependent wives, children and poor relatives within and without the State and to provide a procedure for enforcement thereof against persons residing in other States and territories of the United States having substantially similar reciprocal laws (Preamble to New York Act). It is also provided that the Act shall be construed as an additional remedy in no way affecting or impairing other existing remedies—whether civil or criminal—now available to the petitioner in relation to the same subject matter (§ 8) and so as "to effectuate its general purpose to make uniform the law of the states which enact it" (§ 9).

While we have not heretofore dealt with the constitutionality of the New York Act, three of the Appellate Divisions of the Supreme Court have recognized its validity by dealing with various aspects relating to reciprocal enforcement of orders from other States (cf. *Wohlfarth* v. *Wohlfarth*, 1 A D 2d 658 [1st Dept.]; *Buongiorno* v. *Buongiorno*, 286 App. Div. 1019 [2d Dept.]; *Matter of Guyette* v. *Haley*, 286 App. Div. 451 [3d Dept.]).

We also note in passing that substantially similar reciprocal statutes have been enacted in all of the other States and territories of the United States (see McKinney's Cons. Laws of N. Y., Book 65, "Unconsolidated Laws" [1955

Supp.] § 2111 n.; Report 1953 Annual Meeting of the National Asociation of Attorneys General; *Commonwealth* v. *Shaffer*, 175 Pa. Superior Ct. 100 [1954], allocation refused by Pennsylvania Supreme Court on May 17, 1954, 175 Pa. Superior Ct. XXV; *Mahan* v. *Read*, 240 N. C. 641 [1954], and when challenged in other States its constitutional validity has been upheld (*Duncan* v. *Smith*, 262 S. W. 2d 373 [Ky., 1953]; *Commonwealth of Pennsylvania, Use of Warren* v. *Warren*, 204 Md. 467 [1954]; *Freeman* v. *Freeman*, 226 La. 410 [1954]; *Commonwealth* v. *Shaffer, supra; Proctor* v. *Sachner*, 143 Conn. 9 [1955]; *Smith* v. *Smith*, 125 Cal. App. 2d 154 [1954]; *Whittlesey* v. *Bellah*,[2] 130 Cal. App. 2d 182 [1955], cert. denied 350 U. S. 821 [1955]).

In this court the appellant challenges, as he did in the courts below, the validity of the support order for the

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[2] *Whittlesey* involved the New York and California statutes here at issue. The parties were married in Virginia in 1937 and had one child. The wife obtained a decree of separation in New York in 1940. Two years later the parties were divorced in Nevada and a support agreement was incorporated in the divorce decree providing that the husband pay a maximum of $50 a month toward the support of the child. Several years later, the wife, who had remarried, instituted proceedings in our State under the Uniform Support Law seeking an increase in payments. The New York court recommended an increase, whereupon the proceeding was forwarded to the California courts where the child's father, a resident, was served. The father contended that he was denied due process and equal protection of the law because he had complied with the terms of the divorce decree, and not absconded or fled, had not received notice of the New York proceeding, and was denied the opportunity to confront his wife and her witnesses. The jurisdiction of the California court to enforce adequate support for the child was sustained even though the father, a California resident, had not been given notice of the initiary proceeding in New York. The California court commented that a more satisfactory record would have been presented if proof of such notice had been sent to the father by mail or had been served upon him personally. However, the court determined that in accordance with the public policy as set forth in the Uniform Support Law, and considering the welfare of the child, the case should not be dismissed because of lack of notice to the father of the New York proceeding.

reason that the reciprocal provisions in the New York and California Acts, at least insofar as they may be applicable to him, are in violation of the Constitution of the United States in that they constitute an agreement or compact between the States without the required consent of Congress (U. S. Const., art. I, § 10, subd. 3) and, as such, are violative of the equal protection clause of both the Federal and State Constitutions (U. S. Const., art. IV, § 2; N. Y. Const., art. I, § 11), as well as constituting an inhibition on the safeguards accorded an individual when prosecuted for crime (U. S. Const., 6th Amdt.; N. Y. Const., art. I, § 6); that the New York Act usurps and disregards the exclusive jurisdiction of Federal courts over cases having a diversity of citizenship (U. S. Const., art. III, § 2, subd. 1) and, finally, that the Domestic Relations Court of the City of New York is without constitutional authority to take jurisdiction of the case (N. Y. Const., art. VI, § 18).

It seems clear beyond peradventure that the reciprocity mentioned in the California and New York Acts is not the result of an agreement or compact requiring the consent of Congress. The agreements and compacts that are forbidden by the United States Constitution (art. I, § 10, subd. 3) are indubitably those having an impact on "the just supremacy of the United States" (*Virginia* v. *Tennessee,* 148 U. S. 503, 519; *Monongahela Nav. Co.* v. *United States,* 148 U. S. 312) or its political integrity (*Florida* v. *Georgia,* 17 How. [U. S.] 491) or interference with sovereign treaty-making powers (*Barron* v. *Baltimore,* 7 Pet. [U. S.] 243, 249) and other situations not pertinent here (cf. U. S. C. A. notes on the Constitution).

Enforcement of proceedings to compel the support of dependent minor children with and without the State is primarily of local concern to the States. Both at common law and by statute, New York has always treated a husband as absolutely responsible in keeping with his

ability for the support of his dependent minor child or children (N. Y. City Dom. Rel. Ct. Act, § 101; Social Welfare Law, § 101) and there is no doubt whatever that neither a divorce or remarriage, nor the fact that the mother has legal custody of the child or children, terminates that liability (*Laumeier* v. *Laumeier,* 237 N. Y. 357, 364) and this may be enforced regardless of residence (*Adams* v. *Adams,* 272 App. Div. 29, 30). Reciprocal enforcement of a support order aimed at this primary parental obligation may not be avoided or excused by resort to the immunities and privileges clause of the Federal Constitution (U. S. Const., art. IV, § 2). True, as the appellant points out, the California law provides in substance that a person having legal custody of a minor child is primarily liable for its care and support (California Civ. Code, § 196). This, obviously, is for the protection of the minor child or children and may not be construed so as to relieve a father of his primary responsibility in that regard, particularly when, as here, he is financially able, and has lost control and custody by reason of his own conduct for, as the California courts have said, that "would be a reproach upon the law". (*Pacific Gold Dredging Co.* v. *Industrial Acc. Comm.*, 184 Cal. 462, 466; *Matter of Cattalini,* 72 Cal. App. 2d 662.)

We reject as insubstantial the appellant's contentions based on the circumstances that his former wife took the child to California, that following dissolution of the marriage in that State she remarried, and that her present husband is better able to support the child than is he, since nothing can turn thereon affecting the constitutionality of the controverted statue.

Appellant's remaining objections are equally lacking in substance. The statute does not inhibit in any way the constitutional safeguards erected to assure due process to one charged with crime (U. S. Const., 6th Amdt.; N. Y.

Const., art. I, § 6). True, the reciprocal enforcement of support is quasi-criminal in nature. However, in both New York and California the proceedings are held in a civil court and no punitive fine or penalty is imposed; the only redress for respondent's willful refusal to comply is to invoke the power of the court to punish for contempt, but even this may not be regarded as punishment for crime but rather for the enforcement of an order of the court in a civil proceeding. The Domestic Relations Court of the City of New York had complete jurisdiction, notwithstanding anything said in the United States Constitution (art. III, § 2, subd. 1) respecting trials of cases between citizens of different States.

The California court does not exercise any jurisdiction over a resident of New York but acts only in behalf of the responding State of New York. The fact that the petitioner wife is a nonresident of New York does not prevent her from resorting to the New York courts in order to compel the father to contribute to the support of his minor child, nor does the nonresidence of the child preclude relief (N. Y. City Dom. Rel. Ct. Act, § 103, subd. 1; § 137, subd. 1; *Adams* v. *Adams, supra;* cf. *Duncan* v. *Smith, supra*).

The Domestic Relations Court is not without jurisdiction by reason of anything said in the New York Constitution relating to inferior courts. Section 18 of article VI specifically empowers the Legislature to establish Domestic Relations Courts and to confer upon them such jurisdiction as may be necessary "to compel the support of a wife, child, or poor relatives by persons legally chargeable therewith who abandon or neglect to support any of them." The appellant contends that this limits the jurisdiction of the Domestic Relations Court to those cases wherein abandonment or neglect is charged and that the New York Support of Dependents Law does not make

abandonment or neglect a prerequisite to jurisdiction. Therefore, reasons the appellant, it is incongruous to allow the Domestic Relations Court to administer the New York statute. The answer to this argument is that the statute speaks not of neglect, but of neglect to support a dependent minor child. It is indisputable on this record that the appellant has neglected to support his minor child and it matters not that such child presently resides with her nonresident mother in California.

This all leads to the conclusion that the reciprocal provisions of the dependency support act as applied in this case to the support of a minor child are not violative of either the Federal or State Constitutions and that the New York Act insofar as it relates to the reciprocal enforcement of support for a minor child is a valid enactment. We decide no other question.

The order should be affirmed.

Conway, Ch. J., Desmond, Fuld, Froessel and Van Voorhis, JJ., concur; Burke, J., taking no part.

Order affirmed.

APPENDIX B

Uniform Support of Dependents Law, as enacted in State of New York by Laws 1949, ch. 807, as amended*

UNIFORM SUPPORT OF DEPENDENTS LAW

SECTION 1. Short title; purpose.
2. Definitions.
3. Persons legally liable for support of dependents.
4. Jurisdiction and powers of court.
5. Cases in which proceedings are maintainable.
6. Procedure.
7. Duty of petitioners' representatives.
8. Construction of act.
9. Uniformity of interpretation.
10. Separability.

SECTION 1. **Short title; purpose.**

This act may be cited and referred to as the uniform support of dependents law.

The purpose of this uniform act is to secure support in civil proceedings for dependent wives, children and poor relatives from persons legally responsible for their support.

§ 2. **Definitions.**

As used in this act, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

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* See, with respect to the text of the statute, comment, *supra*, pp. 2-3.

Appendix B

(a) 'State' shall mean and include any state, territory or possession of the United States and the District of Columbia.

(b) 'Court' shall mean and include the domestic relations court of the city of New York, the children's court in any county outside the city of New York, whether established as a separate court or as a part or division of the county court, and a municipal court; when the context requires, it shall mean and include a court of another state defined in and upon which appropriate jurisdiction has been conferred by a substantially similar reciprocal law.

(c) 'Child' includes a step child, foster child, child born out of wedlock or legally adopted child and means a child actually or apparently under seventeen years of age, and a child over seventeen years of age who is unable to maintain himself and is likely to become a public charge.

(d) 'Dependent' shall mean and include a wife or child who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the state or states wherein the petitioner and the respondent reside.

By L. 1955, ch. 289, effecti October 1, 1955, subd. (d) w amended to read as follows:

(d) 'Dependent' shall m and include any person who entitled to support pursuant this act.

(e) 'Petitioner' shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this act.

(f) 'Respondent' shall mean and include each person against whom a proceeding is instituted pursuant to this act.

(g) 'Petitioner's representative' shall mean and include a corporation counsel, county attorney, state's attorney,

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commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this act or under the laws of the state or states wherein the petitioner and the respondent reside.

(h) 'Summons' shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this act.

(i) 'Initiating state' shall mean the state of domicile or residence of the petitioner.

(j) 'Responding state' shall mean the state wherein the respondent resides or is domiciled or found.

§ 3. **Persons legally liable for support of dependents.**

For the purpose of this act:

(a) A husband in one state is hereby declared to be liable for the support of his wife and any child or children under seventeen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for their support

By L. 1955, ch. 289, effective Oct. 1, 1955, old § 3 was repealed and a new § 3 inserted in the statute, reading as follows:

§ 3. **Persons legally liable for support of dependents.**

For the purpose of this act, the following persons in one state are declared to be liable for the support of dependents residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such

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a fair and reasonable sum according to his means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this act.

(b) A mother in one state is hereby declared to be liable for the support of her child or children under seventeen years of age residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever, except in the case of a child born out of wedlock, the father of such child or children is dead, or cannot be found, or is incapable of supporting such child or children, and, if she is possessed of sufficient means or able to earn such means, she may be required to pay for the support of such child or children a fair and reasonable sum according to her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this act.

(c) The parents in one state are hereby declared to be severally liable for the support of a child seventeen years of age or

means, may be required to pay for such support a fair and reasonable sum, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this act:

(a) Husband liable for support of his wife;

(b) Father liable for support of his child or children under seventeen years of age;

(c) Mother liable for support of her child or children under seventeen years of age whenever the father of such child or children is dead, or cannot be found, or is incapable of supporting such child or children;

(d) Parents severally liable for support of their child seventeen years of age or older whenever such child is unable to maintain himself and is likely to become a public charge;

(e) Wife liable for support of her husband if he is incapable of supporting himself;

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lder residing or found in the ame state or in another state aving substantially similar or eciprocal laws, whenever such hild is unable to maintain himelf and is likely to become a ublic charge.

(d) A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, hall be deemed the legitimate hild or children of both parents, egardless of the validity of such marriage.

(e) A child or children born f parents who held or hold hemselves out as husband and ife by virtue of a common law marriage recognized as valid by he laws of the initiating state nd of the responding state shall e deemed the legitimate child r children of both parents.

(f) A woman who was or is eld out as his wife by a man y virtue of a common law marriage recognized as valid by the aws of the initiating state and f the responding state shall be eemed the legitimate wife of uch man.

(f) Adult person liable for support of his or her parent or parents;

(g) Grandparent liable for support of his or her grandchild or grandchildren.

Laws 1955, ch. 289, effective Oct. 1, 1955, further enacted a new § 3-a, entitled "Additional provisions regarding liability for support", subds. (a), (b) and (c) of which are identical with former § 3, subds. (d), (e) and (f), respectively, and subds. (d) and (e) of which are identical with former § 3, subds. (g) and (h) respectively.

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(g) Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from his wife or a decree dissolving his marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

(h) The natural parents of a child born out of wedlock shall be severally liable for the support of such child, but the liability of the natural father shall not be enforceable unless he has been adjudicated to be the child's father by a court of competent jurisdiction, or he has or shall acknowledge paternity of the child in open court or by a verified written statement.

§ 4. **Jurisdiction and powers of court.**

For the purposes of this act:

(a) The court shall have jurisdiction regardless of the state of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating state or the dependent person has ever been a resident of the responding state.

(b) The court of the responding state shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of

education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties.

(c) The courts of both the initiating state and the responding state shall have the power to order testimony to be taken in either or both of such states by deposition or written interrogatories, and to limit the nature of and the extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner.

§ 5. **Cases in which proceedings are maintainable.**

A proceeding to compel support of a dependent may be maintained under this act in any of the following cases:

(a) Where the petitioner and the respondent are residents of or domiciled or found in the same state.

(b) Where the petitioner resides in one state and the respondent is a resident of or is domiciled or found in another state having substantially similar or reciprocal laws.

(c) Where the respondent is not and never was a resident of or domiciled in the initiating state and the petitioner resides or is domiciled in such state and the respondent is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

(d) Where the respondent was or is a resident of or domiciled in the initiating state and has departed or departs from such state leaving therein a dependent in need of and entitled to support under this act and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

Appendix B

§ 5-a. **Remedies of a public agency.**

Whenever the state or a political subdivision, or any official agency thereof, is furnishing support or is likely to furnish support to a dependent it shall have the same right to invoke the provisions of this act as the dependent to whom the duty of support is owed.

§ 6. **Procedure.**

(a) A proceeding under this act shall be commenced by a petitioner by filing a verified petition in the court in the county of the state wherein he resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that he is in need of and is entitled to support from the respondent, giving his name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support.

(b) If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

(c) If the respondent be not a resident of or domiciled in or cannot be found in such state, a judge of such court shall certify that a verified petition has been filed in his court in a proceeding against the respondent under this act to compel the support of the petitioner, that a summons, duly issued out of his court for service upon the respondent has been returned with an affidavit to the effect that the respondent cannot with due diligence be located or served with such process in the initiating state, that the respondent is believed to be residing or domiciled in the responding state and that, in his opinion, the respondent should be compelled to answer such petition and should be dealt with according to law, and he shall transmit such

certificate and certified copies of such petition and summons to the appropriate court in the responding state. In the event that the court shall have before it satisfactory evidence that the respondent is not within the initiating state or cannot be served with process there, the summons and affidavit required herein may be omitted and the certificate shall contain a statement of the reasons for said omissions and the pertinent evidence supporting the same. [Last sentence added by L. 1956. ch. 150, effective March 12, 1956]

(d) Any judge of a court in the county of the responding state in which the respondent resides or is domiciled or found, upon presentation to him of such certificate and certified copies of such petition and summons, shall fix a time and place for a hearing on such petition and shall issue a summons out of his court, directed to the respondent, duly requiring him to appear at such time and place.

(e) It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's respresentative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

(f) If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

(g) Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court

shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state a certified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

(h) Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

(i) Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

(j) If a respondent, duly summoned by a court in the responding state, wilfully fails without good cause to appear as directed in the summons, he shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who wilfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

(k) If, on the return day of the summons, the respondent appears at the time and place specified therein and fails to answer the petition or admits the allegations thereof or, if, after a hearing has been duly held by the court in the responding state in accordance with the provisions of this section, such court has found and determined that the prayer of the petitioner, or any part thereof, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from

the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay therefor such sum as the court shall determine, having due regard to the parties' means and circumstances. A certified copy of such order shall be transmitted by the court to the court in the initiating state and such copy shall be filed with and made a part of the records of such court in such proceeding. The court shall place the respondent on probation on such terms and conditions as the court may deem proper or necessary to assure faithful compliance by the respondent with such order. The court shall also have power to require the respondent to furnish recognizance in the form of a cash deposit or surety bond in such amount as the court may deem proper and just to assure the payment of the amount required to be paid by the respondent for the support of the petitioner.

(l) The court making such order shall have the power to direct the respondent to make the payments required thereby at specified intervals to the probation department or bureau of the court and to report personally to such department or bureau at such times as may be deemed necessary and the respondent shall at all times be under the supervision of such department or bureau.

(m) A respondent who shall wilfully fail to comply with or violate the terms or conditions of the support order or of his probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

(n) Upon the receipt of a payment made by the respondent pursuant to the order of the court of the responding state in any proceeding under this act, the

probation department or bureau of such court shall forthwith transmit the same to the court of the initiating state.

(o) The probation department or bureau of the court in the responding state shall, not later than thirty days following the end of each fiscal year, furnish to the court of the initiating state an itemized statement under oath of all payments made by the respondent during such fiscal year for the support of the petitioner in such proceeding.

(p) The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

(q) [added by L. 1956, ch. 150, effective March 22, 1956] The court of the responding state may use any power to enforce a duty of support against a respondent under this act which is otherwise available to it under the laws of the responding state.

§ 6-a. **Appeals; effectiveness of orders.**

Any respondent in a proceeding brought under the provisions of this act shall have the same right of appeal as in civil proceedings or actions brought in the same court. Any order for support made by the court shall not be affected by an appeal but shall continue in effect until the appeal is decided and thereafter, if the order is affirmed, until changed by further order of the court.

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§ 7. **Duty of petitioners' representatives.**

It shall be the duty of all petitioners' representatives of this state to appear in this state on behalf of and represent the petitioner in every proceeding pursuant to this act, at the time the petition is filed and at all stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating state or the responding state.

§ 7-a. **Expenses of proceedings.**

Expenses of stenographic records of court proceedings and of certification of court records shall be a county charge and shall be paid out of the county treasury.

§ 8. **Construction of act.**

1. This act shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

2. This act shall not be construed to confer jurisdiction on the court of the initiating or respondent state in any pending or future action for divorce, legal separation or annulment.

§ 9. **Uniformity of interpretation.**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

§ 10. **Separability.**

If any part of this act or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of such act or the application thereof to other persons and circumstances.

APPENDIX C

Uniform Reciprocal Enforcement of Support Act, as enacted in State of California by Stats. 1951, ch. 694, as amended by Stats. 1953, ch. 1290

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

Chapter 1. General Provisions

1650. This title is known and may be cited as the Uniform Reciprocal Enforcement of Support Act.

1651. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

1652. The purposes of this title are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

1653. As used in this title unless the context requires otherwise,

(1) "State" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the superior court and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(5) "Law" includes both common and statute law.

(6) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed.

(9) "Prosecuting official" means the district attorney, city attorney, or city prosecutor charged with the prosecution of criminal offenses in the city or other area in which the obligor is alleged to be present.

1654. The remedies provided in this title are in addition to and not in substitution for any other remedies.

1655. Duties of support arising under the law of this State, when applicable under Section 1670, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

Chapter 2. Criminal Enforcement

1660. The Governor of this State (1) may demand from the Governor of any other state the surrender of any person found in such other state who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand

by the Governor of any other state any person found in this State who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

1661. Any obligor contemplated by Section 1660, who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the court of this State during the period of such compliance.

Chapter 3. Civil Enforcement

1670. Duties of support enforceable under this title are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.

1671. Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

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1672. All duties of support are enforceable by action irrespective of relationship between the obligor and the obligee. Jurisdiction of all proceedings hereunder shall be vested in the superior court.

1673. The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number.

1674. The prosecuting official may, upon the request of the court, represent the plaintiff in any proceeding under this title.

1675. A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

1676. If the court of this State acting as an initiating state finds that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the complaint, (2) its certificate, and (3) this act to be transmitted to the court in the responding state. If the name and address of such court are unknown and the responding state has an information agency comparable to that

established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

1677. A court of this State acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this State shall be waived, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant, or either. Where the action is brought by or through the State or an agency thereof, there shall be no filing fee, library fee, or reporter's fee.

1678. When the court of this State, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state; or (b) as a responding state, obtain the body of the defendant by appropriate process.

1679. The Attorney General is hereby designated as the state information agency under this title, and it shall be its duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this title and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law.

(2) To maintain a register of such lists received from other states and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this title.

1680. When the court of this State, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall (1) docket the cause, (2) notify the prosecuting official, (3) set a time and place for a hearing, and (4) take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

1681. If a court of this State, acting as a responding state, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at is disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating state.

1682. The court shall conduct proceedings under this title in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

1683. If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

1684. The court of this State when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

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1685. In addition to the foregoing powers, the court of this State, when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the probation officer of the county or the obligee and to report personally to such probation officer at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

1686. The court of this State when acting as a responding state shall have the following duties which may be carried out through the probation officer of the county:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

1687. The court of this State when acting as an initiating state shall have the duty which may be carried out through the probation officer of the county to receive and

disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

1688. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this title. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

1689. Any order of support issued by a court of this State when acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

1690. Participation in any proceedings under this title shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.